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March 21, 2013

The Honorable Glen Becerra
Simi Valley City Council
2929 Tapo Canyon Road
Simi Valley, CA 93063

Re: Brown Act Complaint

Dear Councilmember Becerra:

The District Attorney's Office has received a complaint that you violated the Ralph M. Brown Act (public meeting law) at the City Council's regular meeting of February 25, 2013. I have reviewed the meeting agenda and the video of the relevant portion. As discussed below, it is our conclusion that you discussed an item that was not on the agenda in violation of the Brown Act.

FACTUAL SUMMARY

During agenda item 8A, City Council/Board Member/Special District Member Reports, you discussed the issue of residences on Leeds Street. (This is apparently the property that had been identified as the Parkside Villas condominiums in item 6A of the agenda of January 28, 2013.) You stated that the condominiums had been built for sale but were now being rented or leased out. You stated that a closed session and an open session had been held and that staff had been authorized to negotiate an agreement with the developer. You stated that you had multiple concerns about the matter. One concern was that an agreement had been signed without council authorization. Another concern was that the council was never informed that the agreement was signed. As a result, public input had been given without the public knowing that an agreement had been signed. You stated that the staff report for the meeting of January 28 discussed authorizing the Mayor to sign a memorandum of understanding, but the memorandum had been signed in December. You stated that when the city made a mistake, it should own it, apologize for it, and move on. You stated that you appreciated that steps had been taken to prevent such a mistake in the future.

Your initial discussion of this item took approximately 3½ minutes. Mayor Huber then spoke for about 2 minutes, stating that you were violating the confidentiality of a closed session in

The Honorable Glen Becerra
March 21, 2013
Page 2

violation of the Brown Act and suggesting that the item be agendized.¹ You responded that the item had been discussed in both closed and open session and that you were fine with agendizing it. You then continued to discuss the merits of the issue, asserting that the City had approved the memorandum of understanding but did not advise the residents that it had been approved. Mayor Huber finished by stating that when the item was agendized, a full staff report would be prepared. The entire discussion, including the comments of Mayor Huber and another council member regarding the Brown Act, took 6 ½ minutes.

APPLICABLE LAW

The Brown Act requires that at least 72 hours before a regular meeting, the local agency post an agenda containing a brief general description of **each item of business** to be transacted **or discussed** at the meeting. (Gov. Code, § 54954.2 (a) (1).)

The Act provides in Government Code section 54954.2 (a)(2):

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

Section 54954.2 was violated here because the discussion of the handling of the Parkside Villas property was not listed in the agenda. The discussion did not constitute a “brief announcement” or “a brief report of his or her own activities.” Such announcements and reports typically and properly consist of announcing an upcoming community event or a report that a council member had attended a meeting or community event. Although there was a discussion about whether the item should be agendized, this occurred after the Mayor had recognized that you were already discussing an item that was not on the agenda.

The agenda item under which your discussion took place, read:

8A. City Council/Board Member/Special District Member Reports

This item gives the Mayor/Chair and City Council Members/Directors the opportunity to present reports to the other members on committees, commissions, or special projects on which they may be participating.

¹ Because I do not know what statements were made in closed session, I express no opinion as to whether or not confidential statements were improperly disclosed.

The Honorable Glen Becerra
March 21, 2013
Page 3

Your discussion clearly was not a report regarding a committee, commission, or special project on which you were participating.

Your discussion also impacted Government Code section 54954.3(a). This provision requires that the public be given an opportunity to "directly address the legislative body . . . before or during the legislative body's consideration of the item." Because the public was not given notice that you would be discussing this item, the public did not have the opportunity to comment on the item.

RESOLUTION OF COMPLAINT

The district attorney has authority under Government Code section 54960 to bring an action for the purpose of stopping or preventing violations or threatened violations of the Brown Act. Such an action may be based upon past violations, where they establish that violations will continue in the future, for example, where the public entity refuses to admit the violation. (*Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 915-917.)

Rather than bring legal action at this time, we are sending this letter in the hope that you will act in compliance with the Act in the future. Should the District Attorney's Office receive future complaints regarding compliance with the Act, we will reevaluate whether legal action is appropriate.

Very truly yours,



MICHAEL D. SCHWARTZ
Special Assistant District Attorney

MDS\cb

pc: The Honorable Bob Huber
Marjorie Baxter, City Attorney